

## DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
File completed and officer recommendation:	CBS	19/9/18
Planning Development Manager authorisation:	AN	20/9/18
Admin checks / despatch completed	PW	21/9/18

*KLO*

**Application:** 18/01218/LUEX **Town / Parish:** Ardleigh Parish Council

**Applicant:** Mr Ray Allen

**Address:** The Bungalow Hunters Chase Ardleigh

**Development:** Occupation of the Site address in non-compliance with condition 4 of planning permission TEN/1451/84 - Agricultural occupancy condition.

### 1. Town / Parish Council

No comments

### 2. Consultation Responses

None

### 3. Planning History

92/00758/FUL	Change of use of land from agriculture (horticulture) to use as a touring caravan site	Withdrawn	03.09.1992
96/00003/FUL	Change of use of part horticultural holding to touring caravan site with service block	Withdrawn	20.02.1996
84/01451/FUL	Det. single storey dwelling in assoc - with horticultural business	Approved	12.02.1985
85/00371/FUL	Temp siting of residential caravan	Approved	21.05.1985
85/00372/FUL	One agricultural dwelling ( details under TEN/1451/84 )	Approved	21.05.1985
89/00267/FUL	Det. agricultural dwelling for private residential in assoc with agricultural business	Refused	04.07.1989
08/00858/FUL	Single residential bungalow with outbuildings/garage without agricultural restriction.	Approved	

18/01218/LUEX

Occupation of the Site address in Current  
non-compliance with condition 4 of  
planning permission TEN/1451/84 -  
Agricultural occupancy condition.

#### 4. Relevant Policies / Government Guidance

NPPF National Planning Policy Framework July 2018

National Planning Practice Guidance

As this is an application for a Certificate of Existing Lawful Use only matters of fact and law apply and national and local planning policies are not relevant to decision making. Overall the test as to whether an application should be granted is on the balance of probabilities as to the evidence submitted.

#### 5. Officer Appraisal (including Site Description and Proposal)

The application site is a dwelling constructed under past planning permissions 84/01451/FUL and 85/00372/FUL. It has an area of 156 square metres. The dwelling is at the junction of two roads on Hunters Chase. As constructed it was intended that it would only be used in conjunction with nearby agricultural activity and that the occupiers allowed to use it would be restricted because of an "agricultural tie" condition.

As only technical matters of fact and law need to be considered as to this application a site visit has not taken place.

The condition concerned is Condition 4 to planning permission 84/01451/FUL (TEN/1451/84) dated 12 February 1985. This states:

**The occupation of the dwelling hereby permitted shall be limited to persons wholly or mainly or last employed locally in agriculture as defined in Section 290(1) of the Town And Country Planning Act 1971 or in forestry or a dependent of such a person residing with him ( but including a widow or widower of such a person).**

The definition of agriculture and thus agricultural use is now updated by virtue of the Town And Country Planning Act 1990 replacing the 1971 Act. Agriculture would also include horticulture as a form of agriculture.

The case made for the granting of a Certificate of Existing Lawful Use relies upon the condition imposed in 1985 having been breached continuously for a period of over 10 years. In this case the period to be considered is a period of 10 years from 27 July 2008 as a date 10 years before the date on which this application became valid i.e. 27 July 2018.

The case for the granting of the Certificate is contained in a Statement by the Applicant. His case is that he acquired the land in 1984 jointly with his father. This was run for the purposes of horticulture. The house was built as part of that project. The use expanded in 1985 via the purchase of additional land.

In 1987 two extreme weather incidents in August and October destroyed the polytunnels and glasshouses on site to the extent that horticulture was disrupted and could not operate as previously and therefore horticulture ended circa 1987.

The Applicant and his family then needed to find an alternative source of income and therefore purchased a wholesale fruit and vegetable business mostly based in Ipswich, Suffolk. The produce sold was produced elsewhere and the application site was not used to grow produce for that business.

In 1988-1989 some work to restore horticultural production at the application site took place but by 1990 cultivation had to cease due to disease.

The horticultural business run in Ipswich ceased in the period 1990-1993 due to the retirement of the applicants parents. The applicant had employment in lorry driving between 1990 and 2012.

His parents used the land as a touring caravan site licenced by the Caravan Club for the period 1990-2017. The applicant's father died in 2009 and his mother died in 2016. The case made is that no occupier has been employed in agriculture in excess of 10 years.

On balance no agricultural or horticultural use has taken place at the site since 1990. The activity via the caravan club would not be agricultural and technically as it is exempt from caravan site licensing it does not require planning permission as "permitted development" for planning purposes.

Former Government Circular 11/95 (now cancelled) provided advice about the phrase "last employed in agriculture ". The advice is still a good working practice even though the circular is cancelled. The advice is "A person who last worked in agriculture/forestry but who now works on a permanent basis mainly in non-agricultural/forestry employment would NOT satisfy model condition 45."

Although the applicant at one time worked in agriculture on the application site and so did his parents that period was brought to an end between 1987-1993 when all three moved on to the wholesale fruit and vegetable business. The applicant has briefly been employed in agriculture again in 1989-1990 but after that has driven lorries from 1990-2012. Therefore based on this advice the condition has been breached by the three members of the family post 1990.

The Council does not have any compelling evidence of its own to refute these Statements and therefore on the balance of probabilities the case for a Certificate of Existing Lawful Use is made.

A further requirement for the issue of a Certificate is that the local planning authority has not taken enforcement action against that use or uses within that 10 year period.

Should the certificate be granted the Council would be accepting on the balance of probabilities that the claimed use was now immune from formal planning enforcement action under the Town and Country Planning Act 1990. In the event that the evidence submitted supports the case on the balance of probabilities then a Certificate should be granted. There is no current outstanding enforcement notice as to the claimed use.

In determining this application the National Planning Practice Guide on Lawful Development Certificates is relevant. Within paragraph 6 of the practice guide to these applications it is noted that "the burden of proof" in applications of this type is firmly with the applicant.

The relevant test is on the "balance of probabilities" and local planning authorities are advised that if they have no evidence of their own to contradict or undermine the applicant's version of events, there is no good reason to refuse the application provided the applicant's evidence is sufficiently precise and unambiguous to justify the grant of a certificate.

In order to grant a Certificate the Council would need to be satisfied on the balance of probabilities that the claimed use had been carried out at the application site for a period of 10 years continuously and that the Council were not in a position to take further formal action to end that breach of planning control. Here the 10 year period starts on 27 July 2008 10 years before this application became valid on 27 July 2018.

The Planning Practice Guidance issued on 6 March 2014 advises:

*In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the*

*application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability. The relevant test is the 'balance of probability', and authorities are advised that if they have no evidence of their own to contradict or undermine the applicant's version of events, there is no good reason to refuse the application provided the applicant's evidence is sufficiently precise and unambiguous to justify the grant of a certificate.*

A case has been made on the balance of probabilities that the condition concerned has been continuously breached for more than 10 years before 27 July 2018 and therefore a Certificate should be granted.

## **6. Recommendation**

Lawful Use Certificate Granted

## **7. Conditions / Reasons for Refusal**

Tendring District Council hereby certify that on 27 July 2018 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto as edged red on the plan attached to this decision notice was lawful within the meaning of Section 191 of the Town And Country Planning Act 1990 (as amended) for the following reason(s):

The Local Planning Authority is satisfied that sufficient evidence has been provided to demonstrate that, on the balance of probability, the site known as The Bungalow Hunters Chase, Ardleigh, Essex CO7 7LN has been used without compliance with condition 4 of Planning Permission 84/01451/FUL (TEN/1451/84) for a continuous period of at least 10 years prior to the date of this application

Therefore a Certificate of Lawful Existing Use should be granted in accordance with Section 191 of the Town and Country Planning Act 1990 for this use only.

The use of the land as noted above is immune from enforcement action under Section 171B of the Town and Country Planning Act 1990 (as amended) and is now considered to be lawful.

### **FIRST SCHEDULE**

Use as dwellinghouse within Use Class C3 of the Town And Country Planning (Use Classes) Order 1987 as amended without compliance with condition 4 of planning permission 84/01451/FUL (TEN 1451/84)

### **SECOND SCHEDULE**

The Bungalow, Hunters Chase, Ardleigh, Essex CO7 7LN as shown edged red on the plan attached hereto

### **Notes**

1. This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the use specified in the First Schedule taking place on the land described in the Second Schedule was lawful on the specified date and thus was not liable to enforcement action under Section 172 of the 1990 Act on that date.
3. This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described or which relates to other land may render the owner or occupier liable to enforcement action.
4. This Certificate accepts that the property no longer has an "agricultural tie".